

CALIFORNIA COASTAL COMMISSION

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DATE: February 24, 2005
TO: Commissioners and Interested Persons
FROM: Jack Ainsworth, Deputy Director
Gary Timm, District Manager
Shana Gray, Coastal Program Analyst
SUBJECT: Santa Barbara County Local Coastal Program Amendment No. MAJ-2-03
(Residential Second Unit) for Public Hearing and Commission Action at
the Wednesday, March 16, 2005, Commission Meeting in Newport Beach.

DESCRIPTION OF THE SUBMITTAL

Santa Barbara County is requesting an amendment to the Coastal Zoning Ordinance/Implementation Plan (CZO/IP) portion of its certified Local Coastal Program (LCP) to revise the existing regulations regarding the permitting and appeal procedures for residential second units (RSUs). The submittal was deemed complete and filed on January 15, 2004. At its March 2004 Commission meeting, the Commission extended the time limit to act on Local Coastal Program Amendment 2-03 for a period not to exceed one year. The Commission must therefore act upon the amendment by its March 2005 Commission meeting.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends the Commission reject the proposed amendment and approve it only if modified so that the ordinance will be consistent with and adequate to carry out the certified LUP. The motions are found on **page 4** of this report. The suggested modifications are primarily necessary to ensure that all new residential second units continue to be subject to all of the provisions and policies of the certified LCP, with the exception of the public hearing requirements. In addition, the suggested modifications clarify that all second units are appealable to the Commission on the basis that they are not a principal permitted use in a coastal county. The suggested modifications also allow for broader application of development standards for RSUs on prime agricultural soils and required ESHA setbacks.

Substantive File Documents: Santa Barbara County Coastal Plan; Santa Barbara County Coastal Zoning Ordinance, Article II, Chapter 35 of the County Code; Resolution No. 03-370 of the Board of Supervisors, County of Santa Barbara, State of California, *In the Matter of Approving Amendments to the Santa Barbara County Local Coastal Program to Amend the Coastal Zone Ordinance to Revise the Existing Regulations Regarding the Permitting and Appeal Procedures for Residential Second Units*, passed, approved and adopted December 2, 2003; Ordinance 4517, *Case Number 03-ORD-00000-00002*, adopted by Board of Supervisors December 2, 2003;

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EXHIBITS

- Exhibit 1. Board of Supervisors Resolution 03-370
 - Exhibit 2. Santa Barbara County Ordinance 4517
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I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The Coastal Act provides:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken. (Section 30514)

The standard of review for the proposed amendments to the Implementation Plan (Coastal Zoning Ordinance) of the certified Local Coastal Program, pursuant to Section 30513 and 30514 of the Coastal Act, is that the proposed amendment is in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the certified Santa Barbara County Local Coastal Program. All Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies pursuant to Policy 1-1 of the LUP.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The County held a series of public hearings (5/14/03, 5/21/03, 6/11/03, 7/16/03, 9/22/03, 10/13/03, 11/4/03, and 12/2/03) and received verbal and written comments regarding the project from concerned parties and members of the public. The hearings were noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551 (b) of the California Code of Regulations, the County resolution for submittal may submit a Local Coastal Program Amendment that will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the County must act to accept the certified suggested modifications within six months from the date of Commission action in order for the Amendment to become effective (Section 13544.5; Section 13537 by reference;). Pursuant to Section 13544, the Executive Director shall determine whether the County's

action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission.

II. STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO)

Following public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation is provided just prior to each resolution.

A. DENIAL AS SUBMITTED

MOTION I: *I move that the Commission reject the County of Santa Barbara Implementation Program/Coastal Zoning Ordinance Amendment STB-MAJ-2-03 as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the County of Santa Barbara Implementation Program/Coastal Zoning Ordinance Amendment STB-MAJ-2-03 and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

B. CERTIFICATION WITH SUGGESTED MODIFICATIONS

MOTION II: *I move that the Commission certify County of Santa Barbara Implementation Program/Coastal Zoning Ordinance Amendment STB-MAJ-2-03 if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the County of Santa Barbara Implementation Program/Coastal Zoning Ordinance Amendment STB-MAJ-2-03 if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

**III. SUGGESTED MODIFICATIONS ON THE
IMPLEMENTATION PLAN/COASTAL ZONING
ORDINANCE (IP/CZO)**

The staff recommends the Commission certify the following, with the modifications as shown below. The proposed amended language to the certified LCP Implementation Plan is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line-out~~. Language proposed by Commission staff to be inserted is shown underlined. Other suggested modifications that do not directly change LCP text (e.g., revisions to maps, figures, instructions) are shown in italics.

1. Development Standards -- General

Sec. 35-142.6. Development Standards.

The following standards shall apply to all residential second units.

1. Pursuant to Government Code, Section 65852.2(b)(5), the County finds that residential second units are consistent with the allowable density and with the general plan and zoning designation provided the units are located on properties with R-1/E-1, EX-1, RR, AG-I-5, AG-I-10, or AG-I-20 zoning designations.

2. Residential second units shall be consistent with the provisions of the applicable zoning district and the policies and development standards of the certified Local Coastal Program.

Revise subsequent number sequence.

2. Development Standards -- Prime Agricultural Soils

Sec. 35-142.6. Development Standards.

The following standards shall apply to all residential second units.

...

~~20. The development of a detached residential second units in agricultural zone districts shall be sited and designed to avoid or minimize significant impacts to agricultural and biological resources to the maximum extent feasible by:~~

a. ~~Avoiding Residential second units shall be prohibited on prime soils on agricultural parcels. or wWhere there are no prime soils, residential second units shall be sited so as to minimize impacts to ongoing agriculturally-related activities.~~

b. Including buffers from sensitive areas.

c. Preserving natural features, landforms and native vegetation such as trees to the maximum extent feasible.

3. Development Standards -- ESHA

Sec. 35-142.6. Development Standards.

The following standards shall apply to all residential second units.

...

~~24. In residential zone districts, aAll development associated with the construction of a detached residential second units shall be located no less than 50 feet from the outer edge of a designated environmentally sensitive habitat area in urban areas and no less than 100 feet from the outer edge of a designated environmentally sensitive habitat area in rural areas. If the habitat area delineated on the applicable zoning maps is determined by the County not to be located on the particular lot or lots during review of an application for a permit, this development standard shall not apply.~~

Add new development standard for wetlands:

25. All development associated with the construction of residential second units shall be located a minimum of 100 feet from the periphery of wetlands consistent with the requirements of Sec. 35-97.9.

Revise subsequent number sequence.

4. Findings for Approval

Sec. 35-142.7. Findings for Approval.

A Coastal Development Permit application for residential second units shall only be approved or conditionally approved if, in addition to the findings required under Sec. 35-169 (Coastal Development Permits), all of the following findings are made:

1. That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the type of use and level of development proposed.
2. That the development is compatible with the established physical scale of the area.
3. That adverse environmental impacts are mitigated to the maximum extent feasible.
4. That streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.
5. That there are adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.
6. That the development will provide adequate buffers from environmentally sensitive habitat areas, consistent with all LCP requirements.
7. That the development will preserve natural features, landforms and native vegetation to the maximum extent feasible
8. That the development will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area.
9. That in designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area.
10. That the development does not significantly obstruct public views from any public road or from a public recreation area to, and along the coast.
11. That the development does not significantly obstruct public access to and along the coast, or public trails.

In addition to the findings under DIVISION 10, Section 35-172 (Conditional Use Permits), prior to the approval of detached residential second units located on a lot zoned AG-I-5, AG-I-10, or AG-I-20, the Zoning Administrator shall make the following findings:

1. The detached residential second unit is compatible with the design of the adjacent residences and the surrounding neighborhood and will not cause excessive noise, traffic, parking or other disturbance to the existing neighborhood.
2. Provisions for on-site parking are adequate for existing and proposed uses.
3. The detached residential second unit will not substantially change the character of the neighborhood in which it is located, or cause a concentration of second units sufficient to change the character of the neighborhood in which it is located.
4. The detached residential second unit does not significantly infringe on the privacy of surrounding residents.

5. Grounds for Appeal & Appeals to Coastal Commission

Sec. 35-142.8. Noticing.

1. Notice of an approved or conditionally approved Coastal Development Permit for an attached residential second unit, or a detached residential second unit not located in an AG-I zone district, shall be given consistent with Sec. 35-181.3 or Sec. 35-181.4 as appropriate. In addition, a copy of the approved Coastal Development Permit shall be mailed, at least ten calendar days prior to the date on which the Coastal Development Permit is to be issued, to property owners within 300 feet of the exterior boundaries of the parcel that the project is located on and to any person who has filed a written request to receive notice with Planning & Development. The notice shall state that the grounds for appeal are limited to the demonstration that the project for which the Coastal Development Permit was approved or conditionally approved is inconsistent with the ~~development standards contained in Sec. 35-142.6~~ applicable provisions and policies of this Article and the Coastal Land Use Plan.

Sec. 35-142.9. Appeals.

The decision of the Planning and Development Department to approve or conditionally approve an application for a residential second unit is final subject to appeal to the Planning Commission; the grounds for appeal are limited to the demonstration that the project for which the ~~land use coastal development permit~~ was approved or conditionally approved is inconsistent with the ~~development standards contained in Sec. 35-142.6~~ applicable provisions and policies of this Article and the Coastal Land Use Plan. The decision of Planning and Development to deny an application for a residential second unit is final subject to appeal to the Planning Commission in accordance with procedures set forth in DIVISION 12, Section 35-182 (Appeals). The decisions of the Zoning Administrator to approve, conditionally approve or deny an application for a detached residential second unit in agricultural areas is final subject to the Board of Supervisors in accordance with the procedures set forth in DIVISION 12, Section 35-182 (Appeals).

All decisions to approve, or conditionally approve, residential second units shall be subject to appeal to the California Coastal Commission.

Sec. 35-182.2. Appeals to the Planning Commission.

...

2. Notwithstanding Sec. 35-181.2.1d, the decision of the Planning and Development Department to approve or conditionally approve a Coastal Development Permit for a residential second unit pursuant to Sec. 35-142 is final subject to appeal to the Planning Commission; the grounds for appeal are limited to the demonstration that the project for which the ~~land use coastal development permit~~ was approved or conditionally approved is inconsistent with the ~~development standards contained in Sec. 35-142.6~~ applicable provisions and policies of this Article and the Coastal Land Use Plan. The decision of Planning and Development to deny an application for a residential second unit is final subject to appeal to the Planning Commission in accordance with procedures set forth in DIVISION 12, Section 35-182 (Appeals).

6. Special Problems Areas

Sec. 35-142.4. Exclusion Areas.

1. Because of the adverse impact on public health, safety, and welfare, residential second units shall not be permitted in Special Problems Areas, designated by the Board of Supervisors, except as provided in Sec. 35-142.4.2 ~~and or~~ 35-142.4.3 below based upon the finding that Special Problems Areas by definition are areas “having present or anticipated flooding, drainage, grading, soils, geology, road width, access, sewage disposal, water supply, location or elevation problems.”

2. Notwithstanding the above, an attached residential second unit may be approved within a designated Special Problems Area where Planning and Development can make all of the following findings:

- a. The project application involves two contiguous lots under one ownership, at least one of which is vacant.
- b. The owner has submitted an offer to dedicate a covenant of easement pursuant to Article VII of Chapter 35 of the County Code over the vacant lot for so long as a residential second unit is maintained on the developed lot.
- c. The vacant lot is determined to be residentially developable pursuant to the following criteria:

...

5) The Special Problems Committee has reviewed the lot and has determined that the site conditions would not cause the Committee to ~~deny~~ recommend denial of development of the site for residential purposes.

3. Planning and Development may approve a residential second unit within a designated Special Problems Area where all of the development standards in Section 35-142.6 and applicable provisions and policies of this Article and the Coastal Land Use Plan can be met and the project has been reviewed ~~and recommended~~ by the Special Problems Committee.

7. Development Standards – Owner Occupancy

Sec. 35-142.6. Development Standards.

The following standards shall apply to all residential second units.

...

3. The owner of the lot shall reside on said lot, in either the principal dwelling or in the residential second unit except when a) disability or infirmity require institutionalization of the owner, or b) Planning Director or Director's designee approves in writing owner's written request for a temporary absence due to illness, temporary employment relocation, sabbatical, extended travels, or other good cause. Prior to the issuance of the Coastal Development Permit, the owner-occupant shall sign and record an agreement with the County of Santa Barbara

requiring that the owner reside on the property. Upon resale of the property, the new owner shall reside on the property or the use of the residential second unit shall be discontinued and the residential second unit shall a) if attached, be converted into a portion of the principal dwelling or b) if detached, the residential second unit shall be removed or converted into a legal accessory structure. This requirement for owner-occupancy is not required for consistency with the Coastal Act or Land Use Plan policies; however, it is included by the County pursuant to state housing law.

IV. FINDINGS FOR DENIAL AS SUBMITTED AND APPROVAL OF THE LOCAL COASTAL PROGRAM IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the LCP amendment as submitted, and approval of the LCP amendment if modified as indicated in Section III (*Suggested Modifications*) above. The Commission hereby finds and declares as follows:

A. GOVERNMENT CODE (AND AB 1866) SECOND UNIT REQUIREMENT BACKGROUND

Signed by former Governor Davis on September 29, 2002, AB 1866 added three new provisions to Section 65852.2 of the Government Code that are particularly significant for the purposes of reviewing proposed second units in residential zones within the coastal zone. The law now:

- 1) Requires local governments that adopt second unit ordinances to consider second unit applications received on or after July 1, 2003 "ministerially without discretionary review or a hearing." (Government Code Section 65852.2(a)(3))
- 2) Requires local governments that have not adopted second unit ordinances to "approve or disapprove the [second unit] application ministerially without discretionary review." (Government Code Section 65852.2(b)(1))
- 3) Specifies that "nothing in [Section 65852.2] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ... except that the local government shall not be required to hold public hearings for coastal development permit applications for second units." (Government Code Section 65852.2(j))

Thus, AB 1866 significantly changes one component of local government procedures regarding coastal development permits for second units in residential zones (public hearings), but does not change the substantive standards that apply to coastal development permits for such second units.

Pursuant to AB 1866, local governments can no longer hold public hearings regarding second units in residential zones. This prohibition applies both to initial local review and any subsequent local appeals that may be allowed by the LCP. The restriction on public hearings, however, does not apply to the Coastal Commission itself. The Commission can continue to conduct public hearings on proposed second units located in areas where the Commission retains permitting jurisdiction and when locally approved coastal development permits are appealed to the Commission.

AB 1866 does not change any other procedures or the development standards that apply to second units in residential zones located within the coastal zone. Rather, it clarifies that all requirements of the Coastal Act apply to second units, aside from requirements to conduct public hearings. Thus, for example, public notice must be provided when second unit applications are filed and members of the public must be given an opportunity to submit comments regarding the proposed development. When a second unit application is appealable, local governments must still file a final local action notice with the Commission and inform interested persons of the procedures for appealing the final local action to the Commission. In addition, all development standards specified in the certified LCP and, where applicable, Chapter 3 of the Coastal Act apply to such second units.

B. AMENDMENT DESCRIPTION

Santa Barbara County is requesting an amendment to the Coastal Zoning Ordinance (Implementation Plan) portion of its certified Local Coastal Program (LCP) to revise the existing regulations regarding the permitting and appeal procedures for residential second units.

Specifically, the County proposes to (see Exhibit 2, Ordinance 4517):

1. Amend Section 35-58, *Definitions*, of the Zoning Code to define *Residential Second Unit*, *Attached Residential Second Unit*, and *Detached Residential Second Unit*.
2. Amend DIVISION 4, *Zoning Districts*, to list detached residential second units as permitted uses consistent with the provisions of Sec. 35-142 (Residential Second Units) in the following zone districts: RR Rural Residential, R-1/E-1 Single Family Residential, and EX-1 One-Family Exclusive Residential.
3. Amend Sec. 35-142, *Residential Second Units*, to combine the existing separate ordinance sections concerning attached and detached residential second units into one section, to allow residential second units to be located in Special Problems Areas under certain circumstances, to increase the maximum allowable floor area of residential second units except for in the Montecito Planning Area, to require a two acre minimum lot size for residential second units proposed to be served by on-site sewage disposal systems unless the lot has particularly favorable soil conditions, to require the property owner to live on-site, to require notice to property owners within 300 feet of the project, and to revise and add development standards.

4. Amend Sec. 35-144.3, *Ridgelines and Hillside Development Guidelines*, and to exempt residential second units from BAR review but require approval from the Chair or designee of the Board of Architectural Review.
5. Amend Sec. 35-144B, *Applications That are Within the Jurisdiction of More than One Final Decision Maker*, to exempt Emergency Permits, Land Use Permits, and CDPs that are not within the Commission's appeal jurisdiction, from the requirement that the highest jurisdiction would process all applications related to the same development project.
6. Amend Sec. 35-169, *Coastal Development Permits*, to delete the public hearing requirement for residential second units located in the geographic appeals jurisdiction of the Coastal Zone.
7. Amend Sec. 35-182, *Appeals*, and Sec. 35-184, *Board of Architectural Review*, to restrict the ability to appeal the approval of a coastal development permit for a residential second unit to situations where it can be demonstrated that the project is inconsistent with the development standards and to require approval from the Chair or designee of the Board of Architectural Review.
8. Amend Sec. 35-210, *Accessory Structures*, of the Montecito Community Plan Overlay District, to clarify that the restrictions on the floor area of combined accessory structure do not apply to residential second units.
9. Add Appendix G to include development standards for residential second units on lots of less than two acres that would be served by on-site sewage disposal systems.

C. EFFECT OF THE PROPOSED AMENDMENT

The certified LCP presently contains a separate ordinance section for attached residential second units and a separate section for detached residential second units. The proposed amendment consolidates these sections into one ordinance for both attached and detached residential second units. Many of the development standards within the ordinance will not change but will be applied to both attached and detached second units.

A Residential Second Unit (RSU) is a dwelling unit on a permanent foundation that provides complete, independent living facilities for one or more persons in addition to a principal one-family dwelling. The residential second unit may either be an attached residential second unit or a detached residential second unit. The residential second unit shall not be sold or financed separately from the principal dwelling but may be rented or leased. It shall contain permanent provisions for living, sleeping, eating, cooking, water and sanitation, and shall be located entirely on the same lot that contains the principal dwelling. An attached RSU shares a common wall with the principal single family dwelling, and a detached RSU is not attached to the principal single family dwelling by a common wall.

1. Permitted Areas and Size

Attached RSUs currently may be permitted in the Agriculture I (AG-I-5, AG-I-10, AG-I-20), Rural Residential (RR), Single Family Residential (R-1/E-1) and the One-Family Exclusive Residential (EX-1) zone districts. There is a 7,000 square foot net lot area minimum lot size required for an attached RSU unless the lot was created prior to June 2, 1966, in which case the minimum lot size is 6,000 square feet.

Detached RSUs currently may be permitted in the Agriculture I (AG-I-5, AG-I-10, AG-I-20), Rural Residential (RR), Single Family Residential (R-1/E-1) and the One-Family Exclusive Residential (EX-1) zone districts provided the lot area is 10,000 square feet or greater (net) if located outside of the Montecito Planning Area. Gross lot area includes portions of the property within easements for public right-of-ways.

The proposed amendment increases the maximum size of RSUs from 1,000 sq. ft. to 1,200 sq. ft., except within the Montecito Planning Area. Additionally, the amendment modifies the sliding scale to allow larger (gross floor area) second units in comparison to the required minimum lot size, see Table 1 below.

Table 1. Existing and Proposed Maximum Floor Area for RSUs in Santa Barbara County, (with the exception of the Montecito Planning Area)

Attached Residential Second Units		
Lot Size	Existing Max. Floor Area	Proposed Max. Floor Area
6,000 – 9,999 sq. ft.	400 sq. ft.	600 sq. ft.
10,000 – 19,999 sq. ft.	600 sq. ft.	800 sq. ft.
20,000 sq. ft. – 1 acre	800 sq. ft.	1,200 sq. ft.
Over 1 acre	1,000 sq. ft.	1,200 sq. ft.
Detached Residential Second Units		
Lot Size	Existing Max. Floor Area	Proposed Max. Floor Area
10,000 – 19,999 sq. ft.	600 sq. ft.	800 sq. ft.
20,000 sq. ft. – 1 acre	800 sq. ft.	1,200 sq. ft.
Over 1 acre	1,000 sq. ft.	1,200 sq. ft.

Attached RSUs in the Montecito Planning Area may currently be permitted in the Single Family Residential (R-1/E-1) zone district. There is a 7,000 sq. ft. net lot area minimum lot size required for an attached RSU unless the lot was created prior to June 2, 1966, in which case the minimum lot size is 6,000 square feet. In the Montecito Planning Area, detached RSUs are presently only allowed on lots of five acres or more and are limited to a floor area of 1,000 square feet. This would not change under the proposed amendment.

The stated purpose of the increase in floor area is to allow for the construction of more attractive units from the standpoint of the residents of the second unit. It also may allow an owner to achieve a faster rate of return on their investment by realizing a higher rental rate to offset the construction costs, County required development impact mitigation fees, and other fees including schools and water and sewer utility district connection fees. Increasing the floor area would allow a greater number of existing

illegal or nonconforming units to be permitted as conforming units. The RSU would be required to meet the same setbacks that are applicable to the principal dwelling.

These revisions are proposed to stimulate the development of residential units in order to partially address the severe housing crisis that is affecting Santa Barbara County by better utilizing residential areas. Also, reducing the minimum lot size for detached RSUs within the Coastal Zone portion of the Montecito Planning Area to 10,000 square feet will allow existing illegal or nonconforming second units to be permitted provided that they can comply with the development standards. This would help maintain the existing housing supply.

2. Processing Requirements

Currently, *attached* RSUs may be approved subject to a ministerial permit process and detached RSUs are required to obtain a discretionary, minor conditional use permit. With the exception of detached RSUs located on property zoned AG-I, the proposed amendment would delete the minor conditional use permit requirement so that both attached and detached RSUs would be subject to only a ministerial permit process. A detached RSU within an AG-I zone distraction would still require the approval of a minor conditional use permit. The text of AB 1866 is specific in establishing the applicability for the creation of secondary units in single-family and multi-family residential zones only.

Applications for *attached* RSUs that are located in the appeals jurisdiction of the Coastal Zone currently require a coastal development permit that are considered by the Zoning Administrator in a public hearing. The amendment would delete the public hearing requirement and require only the approval of a coastal development permit under the jurisdiction of the planning staff.

3. Appeals

Under the exiting regulations, the decisions by staff on a coastal development permit for an attached RSU may be appealed to the Planning Commission, and the decision of the Zoning Administrator on a conditional use permit for a detached RSU may be appealed to the Board of Supervisors. Under the proposed amendment, the responsibility for approval of a coastal development permit for a RSU in a residentially-zoned district is assigned to the Planning and Development Department. The decision of the Planning and Development Department to approve or conditionally approve an application for a residential second unit is final subject to appeal to the Planning Commission. The grounds for appeal are limited to situations where the appellant can demonstrate that the project is inconsistent with the development standards contained in the RSU Ordinance. The decision of the Zoning Administrator to approve, conditionally approve, or deny an application for a detached residential second unit in agricultural areas is final subject to appeal to the Board of Supervisors.

4. Noticing

The existing language requires that notice of an approved coastal development permit for an attached RSU be posted on the project site in three conspicuous places for a ten

day period prior to the issuance of the coastal development permit. For detached RSUs, since they are currently subject to a conditional use permit process, owners of property located within 300 feet of the lot boundaries of the proposed detached RSU would receive mailed notice of the public hearing on the requested conditional use permit.

Under the proposed amendment, notice of approved coastal development permits for attached and detached RSUs located within residential zone districts, and attached units located within agricultural zone districts, are required to be posted on the project site in three conspicuous places for a ten day period prior to the issuance of the coastal development permit. In addition, notice of an approved coastal development permit shall be mailed, at least ten calendar days prior to the date on which the coastal development permit is to be issued, to property owners within 300 feet of the exterior boundaries of the parcel that the project is located on. The notice shall state that the grounds for appeal are limited to the demonstration that the project for which the coastal development permit was approved or conditionally approved is inconsistent with the development standards contained in the RSU ordinance.

5. Exclusion Areas

RSUs may not be permitted currently in areas that are designated by the Board of Supervisors as being Special Problem Areas. Special Problem Areas are, by definition, areas having present or anticipate flooding, drainage, grading, soils, geology, road width, access, sewage disposal, water supply, locations or elevation problems. The amendment proposes to potentially allow RSUs in Special Problems Areas when all of the following circumstances are met: the project application involves two contiguous legal lots under one ownership, at least one of which is vacant; the owner has submitted and irrevocable offer to dedicate a covenant of easement that prevents development on the vacant lot as long as the RSU is maintained on the developed lot; and a determination is made that the vacant lot could be developed with a dwelling. This revision would allow for a transfer of development potential from a vacant parcel that could be developed separately to a contiguous developed lot so that an increase in the residential density within the Special Problems Area would not otherwise result. A RSU within a Special Problems Area may, alternately, be approved where all of the development standards of the Second Unit Ordinance can be met (including evidence of water and sewer) and the project has been reviewed and recommended by the Special Problems Committee.

D. CONSISTENCY ANALYSIS

The certified LUP contains provisions for new development, visual resources, environmentally sensitive habitat, water quality, and public access and recreation policies, and other policies and provisions to protect coastal resources. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County LUP as guiding policies pursuant to Policy 1-1 of the LUP.

LCP Implementation

The County of Santa Barbara has interpreted AB 1866 in the following manner (Board of Supervisors, Staff Report dated 6/17/03):

The primary effect [of AB1866] will be to make permitting of second units ministerial...

II. Effects of AB 1866

A. Provisions that support County discretion

- 1. The County may continue to prohibit second units in specific areas if it makes necessary findings to protect health, safety, and welfare of the community.***
- 2. The County can restrict second units on the basis of adequacy of water and sewer services and impact of second units on traffic flow.***
- 3. Local Agencies may establish minimum and maximum unit size requirements.***
- 4. Local agencies may impose standards on second units that include but are not limited to parking, height, setbacks, lot coverage, and architectural review maximum size of unit and actions that limit adverse effects on properties listed on the California Register of Historic Places.***

B. Provisions that reduce County discretion

- 1. Second units must be considered ministerial without discretionary review or hearing.***
- 2. No decision-maker either the Director nor the Zoning Director can place conditions on specific units to mitigate apparent issues or problems not addressed by development standards.***
- 3. Parking standards are delineated.***

In order to fulfill the requirements of AB 1866 as interpreted above, the amendment proposes the following (Board of Supervisors, Staff Report dated 6/17/03):

A. Staff has prepared ordinance amendments to prevent conflict between state law and local ordinances necessary to implement state law:

- 1. Eliminate discretionary review***
- 2. Propose new definitions of second units to be consistent with AB1866***
- 3. Propose unified regulations and development standards in one place for all districts***
- 4. Revise noticing procedures***
- 5. Provide for ministerial appeals in accordance with state law***

6. Eliminate Coastal Permit hearing requirements

B. Staff has prepared ordinance recommendations consistent with promoting affordable housing:

- 1. Proposed second units in Special Problem Areas under certain circumstances***
- 2. Increased maximum allowable size of units***

[N/A]...

- 4. Revise size restrictions base on lot size***

C. New development standards proposed by staff:

- 1. Require a two acre minimum lot size requirement for residential second units that do not connect to a public sanitary district unless the property has particularly favorable soil conditions (as determined by the Environmental Health Services Division) in which case the minimum lot size may be reduced to one acre. This is proposed in order to implement existing Regional Water Quality Control Board requirements regarding new dwelling units.***
- 2. Require that the entrance for the residential second unit not be visible from abutting streets. This is proposed in order to help maintain the single family residential character of existing neighborhoods.***

County of Santa Barbara further stated (Planning Commission Staff Report dated 9/12/03):

Policy Consistency

Adoption of the proposed ordinance amendments will not result in any inconsistencies with the adopted policies and development standards of the County's Comprehensive Plan (including the community plans) and the Coastal Land Use Plan. Pursuant to Government Code Section 65852.2.B.5, a RSU shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use consistent with the existing general plan and zoning designations for the lot. In order to approve a land use permit for a RSU, it still must be determined that the project is consistent with the policies and development standards of the Comprehensive Plan and Coastal Land Use Plan. Additionally, a RSU will be required to pay development impact mitigation fees to offset the cost of any infrastructure improvements required to serve the RSU. Therefore, these amendments may be found consistent with the applicable coastal, community and comprehensive plans.

The Department of Housing and Community Development, Division of Housing Policy Development, has provided additional guidance in evaluating how these new provisions of State law affect communities. This guidance specifically states:

Does Second-Unit Law Apply to Localities in the Coastal Zone?

Yes. The California Coastal Act was enacted to preserve our natural coastal resources for existing and future Californians. While second-units utilize existing built areas and usually have minimal environmental impact, the need for second-units should be balanced against the need to preserve our unique coastal resources. For these reasons, second-unit law shall not supersede, alter or lessen the effect or application of the California Coastal Act (Division 20 of the Public Resources Code), except that local governments shall not be required to hold public hearings for coastal development permit (CDP) applications for second-units (Government Code 65852.2(j)). As stated in correspondence, dated January 13, 2003 from the California Coastal Commission to all coastal communities, local governments in the coastal zone should amend their Local Coastal Program (LCP) to not require a public hearing in the consideration of second –unit applications. Further, local appeals should be handled in an administrative manner. (Memorandum dated August 6, 2003, re: Second-Unit Legislation Effective January 1, 2003 and July 1, 2003.)

The proposed ordinance is specific to the coastal zone (Article II of the Coastal Zoning Ordinance); however, as proposed, the ordinance does not take into consideration the special circumstances within the coastal zone in which AB 1866 provides that the RSU ordinance shall not be construed to supersede or in anyway alter or lessen the effect or application of the California Coastal Act. The Commission, through previous second unit ordinance approvals, has interpreted AB 1866 to allow changes to the *procedural* aspect of the LCP in order to remove the public hearing requirement. However, the residential second unit must still be in compliance with all other applicable development standards of the LCP (e.g., ESH setbacks, new development requirements) and must make the finding that the project is consistent with the LCP in order to issue a coastal development permit.

As a result, the proposed ordinance does not adequately implement the Land Use Plan (LUP) policies with regard to protection of coastal resources. To ensure that coastal resources are protected consistent with the LUP, Suggested Modification One (1) re-inserts previous language from the current ordinance which requires that residential second units be consistent with the provisions of the applicable zoning district and the goals and policies of the Coastal Land Use Plan. Additionally, because coastal development permits are subject to all other standards of the certified LCP during the processing of residential second units, Suggested Modification Five (5) clarifies that the grounds for appeal must demonstrate that the coastal development permit is inconsistent with the applicable provisions and policies of the Coastal Zoning Ordinance as well as the Land Use Plan. Finally, Suggested Modification Six (6) allows residential second units within Special Problems Areas only where the applicable provisions and policies of the Coastal Zoning Ordinance and the Land Use Plan are met. Note, the other administrative changes in Suggested Modification 7 were at the request of County staff in order to clarify that the Special Problems Committee is not a regulatory body but instead provides recommendations to decision-makers.

The Commission further finds that Suggested Modification Four (4) is necessary to ensure implementation of the applicable provisions of the LUP. The Commission requires

Suggested Modification 5 to make additional findings for all coastal development permits that approve, or conditionally approve, residential second units. These findings are similar to the findings that are presently made for detached residential second units under the current certified ordinance.

New Development / Cumulative Impacts

Coastal Act Section 30250, as incorporated into the certified LUP, provides a framework for new development to concentrate structures, minimize road lengths through site design, and avoid individual or cumulative impacts to coastal resources. In order to ensure that new development is sited in areas able to accommodate it and where it will not have significant cumulative impacts on coastal resources, as required by Section 30250 of the Coastal Act, siting and design of new development must also take into account the requirements of other applicable policies of Chapter 3 of the Coastal Act, including public access, recreation, land and marine resources, and scenic and visual quality.

Sections 30250 and 30252 of the Coastal Act, as incorporated into the certified LCP, address the cumulative impacts of new developments. Section 30250 (a) of the Coastal Act states:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30252 of the Coastal Act, as incorporated into the certified LCP, states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30250 of the Coastal Act, as incorporated into the certified LCP, requires that new development be located within, or within close proximity to, existing developed areas able to accommodate such development. Consistent with Section 30250, Policies 2-1 and 2-6 of the LCP require that new development must

ensure adequate public services (i.e., water, sewer, roads, etc.) are available. In addition, Policy 2-12 of the LCP provides that the densities specified in the land use plan are maximums and shall be reduced if it is determined that such reduction is warranted by site specific conditions.

Pursuant to LUP and Coastal Act Sections 30250 and 30252 cited above, new development raises issues relative to cumulative impacts on coastal resources. Construction of a second unit on a site where a primary residence exists intensifies the use of the subject parcel. The intensified use creates additional demands on public services, such as water, sewage, electricity, and roads. Thus, second units pose potential cumulative impacts in addition to the impacts otherwise caused by the primary residential development. To reduce cumulative impacts as a result of residential second units, the proposed ordinance includes requirements for minimum lot size, maximum second unit size, and demonstration of sewer and water capacity to serve the proposed development.

The issue of second units on lots with primary residences has been the subject of past Commission action in certifying the Santa Barbara County Coastal Land Use Plan. In its prior certification of the LUP, an upper limit on the size of second units (1,000 sq. ft.) was determined to be necessary in order to meet the requirements in the LUP and Coastal Act Sections 30250 and 30252, given the cumulative impacts such as traffic and infrastructure constraints and given the abundance of potential developable residential lots throughout the County. In past actions, the Commission has found that limiting the size of the structures to a degree wherein RSUs would be more likely to be occupied by one, or at most two people, would have less impact on the limited capacity of roadways (as well as infrastructure constraints such as water, sewage, and electricity) than an ordinary single family residence.

The second unit issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different forms which in large part consist of: 1) a second unit with kitchen facilities including a granny unit, caretaker's unit, or farm labor unit; and 2) a guesthouse, with or without separate kitchen facilities. Past Commission action has consistently found that both second units and guesthouses inherently have the potential to cumulatively impact coastal resources. Thus, conditions on coastal development permits and standards within LCP's have been required to limit the size and number of such units to ensure consistency with Chapter 3 policies of the Coastal Act.

Residential second units are not considered a principle permitted use in coastal counties. Moreover, RSUs are not designated the principle permitted use in Santa Barbara County zone districts. However, to meet the spirit of the recent legislation (AB 1866), conditional use permits, and thus discretionary public hearings, are not required. This should not be interpreted to lessen the intent of Coastal Act requirements. Within the coastal zone, AB 1866 provides that the RSU ordinance shall not be construed to supersede or in anyway alter or lessen the effect or application of the California Coastal Act. To ensure implementation of the LCP requirements and minimize cumulative impacts to coastal resources to the maximum extent feasible while continuing to allow

residential second units in the spirit intended under AB 1866, the Commission requires that all residential second units be appealable to the Coastal Commission, as described in Suggested Modification Five (5). AB 1866 does not hinder the Commission's ability to have public hearings regarding residential second units.

Additionally, the proposed ordinance requires that the owner occupy either the principal dwelling or the residential second unit, with limited exceptions. This requirement for owner-occupancy is included by the County in order to meet state housing law requirements for affordability. The requirement for owner occupancy is not required for consistency with the Coastal Act or Land Use Plan policies and would not be an acceptable grounds for appeal to the Commission. This is clarified through Special Condition Seven (7).

Prime Agricultural Soils

The Coastal Act policies provide for the continuation of coastal agriculture on prime agricultural lands. The LCP contains several policies regarding protection of agricultural resources. Sections 30241 and 30242 of the Coastal Act require that all agricultural lands be protected and maintained and that conversion of such lands shall be limited. Consistent with Sections 30241 and 30242, Policy 8-2 of the LCP provides that parcels designated for agricultural use located in rural areas shall not be converted unless such conversion would allow for another priority use under the Coastal Act such as public access, recreation, habitat protection, etc. Policy 8-4 of the LCP requires that land division of agricultural land shall not diminish the long-term agricultural viability of the parcels involved.

Section 30241 of the Coastal Act requires that the maximum amount of prime agricultural land be maintained in agricultural production, and Section 30243 of the Coastal Act states "the long-term productivity of soils...shall be protected..." These policies are incorporated as guiding principles of the certified LUP agricultural policies. Combined, these policies require maximum protection of prime soils and the productivity of these soils. Residential second units cannot be interpreted as maintaining agriculture land in production and such structures may result in the hardscape/foundation or other development associated with the residential second unit on prime agricultural soils, effectively removing it from use.

Therefore, the Commission requires Suggested Modification Two (2) to protect prime soils consistent with Section 30241 and 30243, of the LUP. Suggested Modification 3 clarifies that residential second units, as accessory to the principal residence, on agricultural parcels shall be prohibited on prime agricultural soils, even if there are no other feasible location on the property. Furthermore the requirement to avoid significant impacts to agricultural and biological resources shall be applied to all residential second units, rather than limiting the requirement to detached residential second units in agricultural zone districts.

ESHA

The Coastal Act requires the protection of environmentally sensitive habitat areas (ESHA) against any significant disruption of habitat values. No development may be permitted within ESHA, except for uses that are dependent on the resource. Section 30240 (incorporated by reference into the certified LUP) of the Coastal Act further requires that development adjacent to ESHA is sited and designed to prevent impacts that would significantly degrade ESHA and to be compatible with the continuance of the habitat areas. LUP Policy 2-11 requires all development adjacent to environmentally sensitive habitat areas be regulated to avoid adverse impacts on habitat resources. Regulatory measures include, but are not limited to, setbacks, buffer zones, grading controls, noise restrictions, maintenance of natural vegetation, and control of runoff.

The existing certified LCP provides general policies which require development adjacent to areas designated on the land use plans or resource maps as ESHA, to be regulated to avoid adverse impacts on habitat resources, including measures such as setbacks, buffers, grading and water quality controls. Additionally the LUP and Zoning Ordinance provide specific development standards by ESHA type.

In the proposed ordinance, detached residential second units in residential zone districts are restricted 50 to 100 feet from the boundaries of environmentally sensitive habitat. However, the LUP and Zoning Code already provide more specific guidance that applies to all new development including residential second units. To ensure that all of the ESHA policies apply to all new RSU development consistent with the environmentally sensitive habitat protection policies of the certified LCP, the Commission requires Suggested Modification Three (3) which applies the development standard to all residential second units. Further, for clarification, Suggested Modification 4 inserts a new development standard which states that in no case may a RSU be permitted within 100 feet of a wetland.

For the reasons above, the Commission finds that the proposed IP amendments are not consistent with or adequate to carryout the provisions of LUP Policies with respect to new development, prime agricultural soils, environmentally sensitive habitat areas, and implementation unless modified as suggested above.

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to Section 21080.9 of the California Environmental Quality Act ("CEQA"), the Coastal Commission is the lead agency responsible for reviewing Local Coastal Programs for compliance with CEQA. The Secretary of Resources Agency has determined that the Commission's program of reviewing and certifying LCPs qualifies for certification under Section 21080.5 of CEQA. In addition to making the finding that the LCP amendment is in full compliance with CEQA, the Commission must make a finding that no less environmentally damaging feasible alternative exists. Section 21080.5(d)(2)(A) of CEQA and Section 13540(f) of the California Code of Regulations require that the Commission not approve or adopt a LCP, "...if there are feasible

alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.”

The proposed amendment is to the County of Santa Barbara’s certified Local Coastal Program Implementation Ordinance. The Commission originally certified the County of Santa Barbara’s Local Coastal Program Land Use Plan and Implementation Ordinance in 1981 and 1982, respectively. For the reasons discussed in this report, the LCP amendment, as submitted is inconsistent with the applicable policies of the Coastal Act, as incorporated by reference into the Land Use Plan, and the certified Land Use Plan and feasible alternatives and mitigation are available which would lessen any significant adverse effect which the approval would have on the environment. The Commission has, therefore, modified the proposed LCP amendment to include such feasible measures adequate to ensure that such environmental impacts of new development are minimized. As discussed in the preceding section, the Commission’s suggested modifications bring the proposed amendment to the Land Use Plan and Implementation Plan components of the LCP into conformity with the certified Land Use Plan. Therefore, the Commission finds that the LCP amendment, as modified, is consistent with CEQA and the Land Use Plan.